IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 160 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYESHBHAI @ KALIYO MANILAL KHATRI THRO' ASHABEN J KHATRI

Versus

ASSISTANT POLICE COMMISSIONER

Appearance:

1. Special Criminal Application No. 160 of 2003

MS BANNA S DUTTA for Petitioner No. 1

RULE NOT RECD BACK for Respondent No. 1

RULE SERVED for Respondent No. 2-3

MISS NANDINI JOSHI Ld. APP for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/04/2003

ORAL JUDGEMENT

Heard ld. counsel appearing for the petitioner

Mr. Banna Datta and ld. APP Miss Joshi for the respondents.

The petitioner has challenged the legality and validity of the order of externment passed by the Deputy Commissioner of Police, Zone-I, Ahmedabad city dated 16.11.2002 and the order of confirmation dated 7.1.2003 passed by the appellate authority in exercise of powers vested with the appellate authority under sec. 60 of the Bombay Police Act, 1951.

The externee was served with notice to show cause under sec. 59 of the Act and he has responded to the said notice by written reply.

The petitioner has challenged the legality and validity of both these orders on number of grounds referred to in the memo of petition but the basic submission of Miss Datta is that the allegations made in the notice to show cause are vague and it is not otherwise possible to respond to such allegations. Even the date or month of the alleged incident has not been disclosed in the said notice to show cause. It is difficult to respond or reply to such vague show cause notice. The vagueness in the notice seriously prejudice the right to put a valid defence and, therefore, the order of externment should be turned down on this sole ground. Of course, the petitioner has challenged the legality and validity of the order on other grounds also but it is not necessary to deal with other grounds as the notice and the order passed by the authority under sec. 59 of the Act suffers from the above said basic informity. When the order of externment itself is bassed on a vague notice, its confirmation authomatically cannot sustain in the eye of law. In response of the query raised by the court, ld. APP has fairly accepted that the notice to show cause given under sec. 59 of the Act cannot be said to be a specific notice. So, without going into further discussion, I am inclined to allow this petition.

In the result, this petition is allowed. The impugned orders passed by the Deputy Commissioner of Police, Zone-I, Ahmedabad City dated 16.11.2002 and confirmed by the appellate authority by order dated 7.1.2003 are hereby quashed and set aside. Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)
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